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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,873	06/14/2006	Masaki Iwasaki	292122US0PCT	6546
22850	7590	11/06/2007		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER THAKUR, VIREN A	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			11/06/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/582,873	IWASAKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Viren Thakur	1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____                                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/16/06; 6/14/06</u> .                                        | 6) <input type="checkbox"/> Other: ____                           |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Instant claim 1 recites percentages of non-polymer catechins, sweetener, sodium ions, potassium ions. The instant claim is unclear as to whether these percentages are per the total of the green tea extract or the total of the packaged beverage.

Regarding instant claim 3, it is unclear as to how a beverage can be considered a non-tea based beverage if the beverage contains catechins, which are derived from tea.

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Regarding claim 5, the phrase "such that" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 1,3-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohishi et al. (US 20030077374 A1) in view of Kuznicki et al. (US 5681569), Ekanayake et al. (US H001628 H) and Broz (US 20020197376).**

Regarding instant claim 1, Ohishi et al. teach a packaged beverage (Paragraph 0044 and 0045) comprising green tea extract comprising non-polymer catechins from 0.092 to 0.5 percent (Paragraph 0012), which falls within the range of 0.01 and 1 percent, as claimed; quinic acid (Paragraph 0013); an artificial sweetener, such as aspartame, at between 0.05 to 1 percent (Paragraph 0041), which falls within the claimed range of 0.0001 to 15 percent; sodium ions as a result of adding a salt such as sodium polyphosphate, at between 0.01 to 0.5 percent (Paragraph 0043), which is within the claimed range of 0.001 to 0.5 percent. Regarding the pH, Ohishi et al. teach wherein the pH is from 2 to 7, thus encompassing the claimed range of 2 to 6; and in an example, Ohishi et al. teach the pH of 3.2 (Paragraph 0038), thus teaching a beverage having a pH between 2 and 6. Ohishi et al. further teach the ratio of quinic acid to non-polymer catechins as between 0.01 to 1, preferably from 0.01 to 0.5, thus falling within the claimed range (Paragraph 0032). Regarding the oxalic acid, Ohishi et al. teach that if the quinic acid contains oxalic acid, then the amount of oxalic acid should not exceed the content of quinic acid (Paragraph 0033). Furthermore, since the ratio of quinic acid to non-polymer catechins is between 0.01 to 1 or between 0.01 and 0.15 depending on the extract used (Paragraph 0031), then the ratio of oxalic acid to non-polymer catechins would also be a similar ratio. Therefore at a ratio of 0.01, Ohishi et al. would encompass the claimed ratio of not greater than 0.06. Nevertheless, the amount of quinic acid and thus the amount of oxalic acid would have been obvious for the purpose of preventing

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adverse aftertaste to the beverage. Therefore to ensure that the oxalic acid is at a ratio such as 0.01 in terms of the amount of non-polymer catechins would have been obvious to one having ordinary skill in the art for the purpose of preventing an adverse aftertaste to the beverage.

Ohishi et al. are silent in teaching wherein the packaged beverage also contains from 0.001 to 0.2 percent of potassium ions.

It is noted that from applicants' specification that the purpose of using sodium and potassium ions which are added as a result of adding a salt is for the purpose of improving the taste of the product, based on controlling the bitterness and astringency (See Pages 3-4, Paragraph 0006 of applicants' specification). Even further, the specification further teaches on pages 11-12, paragraphs 0020 to 0023, that the sodium and potassium ions exist in fruit extract and tea extract. As such, Ohishi et al. teach a tea extract and further teach fruit extract beverages (Paragraph 0039) and using tea extract in the beverage. Therefore, this teaches the skilled artisan that there would have been a reasonable expectation that the fruit extract and tea extract of Ohishi et al. would also have contained sodium and potassium ions, for providing a specific taste to the beverage. As discussed above, Ohishi et al. teach the claimed range of sodium ions but are silent in the potassium ions and the claimed range. Ohishi et al. also recognize that bitterness and astringency is a problem with large amounts of catechins (Paragraph 0008). Similar to applicants, Ohishi et al. teach reducing the bitterness and astringency of the beverage (See Abstract and Paragraph 0009).

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The inorganic salts taught by Ohishi et al., such as sodium metaphosphate and sodium polyphosphate have been well known to be used as buffers for controlling taste in beverages. Ekanayake et al. is cited as further evidence of salts that act as buffers for tea extract, which is used for beverages (Column 2, Lines 16-17 and Lines 41-44). Broz (US 20020197376) is also cited for the use of sodium and potassium salts that act as buffers to improve the taste of a beverage.

Kuznicki et al. is relied on for teaching a beverage that contains tea solids, electrolytes and carbohydrates to provide improved drinkability (Column 2, Lines 45-48) and for improved cellular hydration. Kuznicki et al. also teach that electrolytes such as sodium and potassium ions are present in fruit juices and in the tea extract, and further teach wherein the percentage of potassium ions is between 0.005 to 0.08 percent (Column 5, Lines 11-19), which is within the instantly claimed range. Kuznicki et al. also teach the combination of the potassium ion with the sodium ions, in a packaged beverage (Column 9, Lines 20-22). As recognized by the prior art, the sodium and potassium salts also act to stabilize and buffer the beverage, thus improving the taste of the beverage, and Kuznicki et al. further teach that the sodium and potassium ions aid facilitate cellular hydration (Column 5, Lines 24-28) and are the major physiological electrolytes (Column 4, Line 66 to Column 5, Line 3). Thus including the electrolytes in a sports drink, such as that of Kuznicki et al. aids in replacing one's electrolytes after physical activity. The beverages of Kuznicki et al. and



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Ohishi et al. are similar in that both teach a beverage comprising catechins and fruit extract and teach improving the drinkability of the beverage. The beverage of Kuznicki et al. is drawn to a sports drink type beverage and Ohishi et al. similarly teach making packaged beverages such as sports beverages (Paragraph 0039). Therefore, it would have been obvious to one having ordinary skill in the art to apply the potassium ions, in combination with the sodium ions already employed by Ohishi et al., for the purpose of improving the taste of the beverage, since it is known in the art, as evidenced by Ekanayake et al. that salts act as buffers and control the taste associated with a beverage as a result of their ability to control the stability and quality of the food product. Since Ohishi et al. teach making sports beverages, it would further have been obvious to one having ordinary skill in the art to use the potassium and sodium salts, as taught by Kuznicki et al. for the purpose of facilitating cellular hydration, thus increasing the physiological effects of the beverage by facilitating replenishment of one's electrolytes after physical activity. Furthermore, to employ a specific amount of the potassium ions, such as that taught by Kuznicki et al. would have been obvious to the ordinarily skilled artisan since it has been recognized in the art that such salts can control the taste and stability of the beverage, while also facilitating the cellular hydration of the nutrients of the beverage while replenishing the body's electrolytes. Therefore to use a particular amount would have been obvious for the purpose of achieving the desired taste, stability and hydration levels without drawing water out of the body, and thus would not have



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provided a patentable feature over the prior art, absent any clear and convincing evidence to the contrary.

Regarding instant claim 3, Ohishi et al. teach non-tea based beverages (Paragraph 0028).

Regarding instant claim 4, Ohishi et al. teach the pH between 2 to 7, as discussed above. Nevertheless, this encompasses the instant claimed range. The pH has been known to the ordinarily skilled artisan to impact the taste of the beverage as well as to aid in the preservation of the beverage. As an example, Ohishi et al. teach a pH of 3.2 in example 1. Nevertheless, to have a pH specifically from 2 to 5 would have been obvious to one having ordinary skill in the art for the purpose of achieving the desired taste of the beverage. Even further to choose any acidic pH level would have been obvious to the ordinarily skilled artisan for the purpose of achieving the desired taste and stability to the product. Therefore to have a pH from 2 to 5 would not have provided a patentable feature over the prior art.

Regarding instant claim 5, Ohishi et al. teach the ratio of the quinic acid to the non-polymer catechins from 0.02 to 0.55 (Paragraph 0027) and also between 0.01 to 0.16 (Paragraph 0031), if purified green tea extract is used. This encompasses limitation within the claimed range of 0.0001 to 0.16. Further regarding instant claim 5, Ohishi et al. teach the concentrate comprising between 30 to 98 percent non-polymer catechins or preferably 40 to 90 percent (Paragraph 0036), which falls within the claimed range of 20 to 90 percent.

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Regarding instant claim 6, Ohishi et al. teach aspartame as the sweetener (Paragraph 0041).

Regarding instant claim 8, Ohishi et al. teach using PET bottles for the beverage (Paragraph 0045) and further teach that it has been known in the art to use transparent packaging, wherein said packaging is a PET bottle. Therefore, to use a transparent PET bottle would have been within the ordinarily capabilities of one skilled in the art, since Ohishi et al. teach that it was recognized in the art to use transparent PET bottles for packaging beverages and since Ohishi et al. teach a PET bottle.

- 7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohishi et al. (US 20030077374 A1) in view of Kuznicki et al. (US 5681569) Ekanayake et al. (US H001628 H) and Broz (US 20020197376). as applied to claims 1, 3-6 and 8, above and in further view of Tsai et al. (US 4946701) and Teach Me Tea Cha.**

Ohishi et al., and Kuznicki et al. are taken as applied above. Regarding instant claim 7, it is interpreted that the beverage is in a form that would allow for ingestion of at least 300 mg of the non-polymer catechins per day. It is noted that Ohishi et al. teach having a high concentration of catechins (Paragraph 0009) and also teach that in the past 4 to 5 cups a day of tea would have to have

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been consumed to achieve the physiological effects of the catechins (Paragraph 0005).

Tsai et al. teach that it has been well known in the art to provide a packaged beverage with at least 300 mg of catechins, as shown in examples 1 and 5, wherein the beverages contain 120 grams (152.6 x 95.7%) and 3.5 grams respectively. Tsai et al. similarly recognize that catechins have physiological benefits (Column 1, Lines 16-24).

Teach Me Tea Cha similar teaches that the catechins have physiological benefits, such as an anti-tumor effect. Teach Me Tea Cha also teach that a person who drinks 10 cups of green tea per day consumes between 0.6 to 1.2 grams of catechins. Ohishi et al. teach that in order to receive the full physiological effects that 4 to 5 cups of tea would have to have been consumed. If 5 cups of the tea of Teach Me Tea Cha was consumed, 0.3 to 0.6 grams of catechins would have been consumed, which is equivalent to 300 to 600 milligrams. Therefore, it would have been obvious to one having ordinary skill in the art that the beverage of Ohishi et al. would have permitted at least 300 mg of catechins per day since Ohishi et al. desire to have an easier means to ingest a larger amount of catechins (Paragraph 0004-0005) which would still provide the full physiological effects.

***Double Patenting***

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8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. **Claims 1, 3-5 and 7-8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-10 of copending Application No. 10/583558 in view of Ohishi et al. (US 20030077374).**

Claims 1, 4 and 8 of copending Application No. 10/583558 encompasses the limitations of 0.01 to 1 percent non-polymer catechins, 0.0001 to 15 percent of a sweetener, 0.001 to 0.5 percent of sodium ions and 0.001 to 0.2 percent potassium ions, a pH of between 2 to 6 and the ratio of oxalic acid to non-polymer catechins not greater than 0.06. Claims 3 and 5 of copending Application 10/583558 encompass claims 3 and 4 of the instant application.

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Claims 9-10 the copending application encompass claims 7-8 of the instant application. The copending application claims 1 and 7 are silent in teaching quinic acid and wherein the quinic acid is present at a ratio to the non-polymer catechins at 0.0001 to 0.16.

Ohishi et al. teach adding quinic acid for the purpose of controlling the bitterness of the catechins (Paragraph 0034). Ohishi et al. also teach using quinic acid at a ratio to non-polymer catechins at 0.01 to 0.5 (Paragraph 0032), thus encompassing the claimed range in instant claim 1. Regarding instant claim 5, Ohishi et al. teach the ratio of the quinic acid to non-polymer catechins between 0.01 to 0.16, when pure green tea extract is used (Paragraph 0031), which falls within the instantly claimed range. Since the copending application similarly teach a beverage comprising catechins, to use a ratio of 0.01 to 0.16, as taught by Ohishi et al. would have been obvious based on the type of non-polymer catechins used for the beverage. The art teaches that catechins derived from purified green tea extract have been well known to be used for non-tea based beverages.

This is a provisional obviousness-type double patenting rejection.

- 10. Claims 1, 3-5 and 7-8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4,8,9,11-14,18,21,25-29 of copending Application No. 11/258892 in view of Ohishi et al. (US 20030077374).**

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Claims 1-4, 8, 9, 11-14 and 18 of copending Application No. 11/258892 teach a non-tea based beverage having a pH from between 2 to 6, comprising 0.03 to 0.6 percent non-polymer catechins, which falls within the instantly claimed range; a sweetener at between 0.0001 to 20 percent (copending claim 3 and 21), thus encompassing the instantly claimed range and at between 0.001 to 15 percent (copending claims 11) which falls within the instantly claimed range. The copending application further teaches sodium ions at between 0.001 and 0.2 and potassium ions at between 0.001 and 0.1 (copending claims 2, 12 and 21); a ratio of oxalic acid to non-polymer catechins at between 0 to 0.02 (copending claims 1, 11) which falls within the instantly claimed range. Copending claims 1 and 11 are silent in teaching quinic acid and quinic acid at a ratio to non-polymer catechins from 0.001 to 0.5 and further between 0.0001 to 0.16, as recited in instant claim 5.

Ohishi et al. teach adding quinic acid for the purpose of controlling the bitterness of the catechins (Paragraph 0034). Ohishi et al. also teach using quinic acid at a ratio to non-polymer catechins at 0.01 to 0.5 (Paragraph 0032), thus encompassing the claimed range in instant claim 1. Regarding instant claim 5, Ohishi et al. teach the ratio of the quinic acid to non-polymer catechins between 0.01 to 0.16, when pure green tea extract is used (Paragraph 0031), which falls within the instantly claimed range. Since the copending application similarly teach a beverage comprising catechins, to use a ratio of 0.01 to 0.16, as taught by Ohishi et al. would have been obvious based on the type of non-

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polymer catechins used for the beverage. The art teaches that catechins derived from purified green tea extract have been well known to be used for non-tea based beverages.

Regarding copending claims 21 and 25-29, the copending claims are silent in the ratio of the quinic acid to non-polymer catechins being not greater than 0.06. Ohishi et al. further teach the ratio of quinic acid to non-polymer catechins as between 0.01 to 1, preferably from 0.01 to 0.5, thus falling within the claimed range (Paragraph 0032). Regarding the oxalic acid, Ohishi et al. teach that if the quinic acid contains oxalic acid, then the amount of oxalic acid should not exceed the content of quinic acid (Paragraph 0033). Furthermore, since the ratio of quinic acid to non-polymer catechins is between 0.01 to 0.1 and between 0.01-0.16 when pure green tea extract is used, the ratio of oxalic acid to non-polymer catechins would also be a similar ratio. Therefore at a ratio of 0.01, Ohishi et al. would encompass the claimed range of not greater than 0.06. Nevertheless, the amount of quinic acid and thus the amount of oxalic acid would have been obvious for the purpose of preventing adverse aftertaste to the beverage. Therefore to ensure that the oxalic acid is at a ratio such as 0.01 in terms of the amount of non-polymer catechins would have been obvious to one having ordinary skill in the art for the purpose of preventing an adverse aftertaste to the beverage.

This is a provisional obviousness-type double patenting rejection.



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- 11. Claim 1,3-6 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 and 6-11 of copending Application No. 10/583556 in view of Ohishi et al. (US 20030077374).**

Although the claims are not identical they are not patentably distinct from each other because claims 1 encompass the limitations of claim 1 of the instant application. Regarding instant claim 1, copending claims 1 and 6 teach the instantly claimed range of non-polymer catechins, the claimed range of sodium and potassium ions and the ratio of oxalic acid to non-polymer catechins. The copending claims teach a sweetener but is silent in the use of an artificial sweetener. Ohishii et al. teach the use of aspartame as an artificial sweetener used from between 0.05 to 1 percent, which encompasses the claimed range (Paragraph 0041). Thus, it is noted that applicant is not the first to have employed artificial sweeteners for a beverage and since the use of artificial sweeteners to sweeten a beverage has been recognized as part of the ordinary capabilities of one skilled in the art, it would have been obvious to use a sweetener, as that taught by Ohishii et al. to sweeten a beverage. Regarding the pH, instant claim 1 is silent in teaching a specific pH, however Ohishi et al. teach a pH from 3 to 7 (Paragraph 0038). The pH is adjusted based on the required taste and chemical stability and thus to use a pH within this range would have been obvious for the purpose of obtaining the desired taste and stability to the beverage. Regarding the quinic acid, the copending claims are silent in teaching

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quinic acid and the instantly claimed ratio of quinic acid to non-polymer catechins. Ohishi et al. teach using quinic acid for the purpose of controlling the bitterness that forms as a result of the adsorption of catechins when consumed (Paragraph 0033). Ohishi et al. further teach the ratio of quinic acid to non-polymer catechins as between 0.01 to 0.15 (Paragraph 0031). Therefore it would have been obvious to one having ordinary skill in the art to use quinic acid in the copending application, as taught by Ohishi et al. for the purpose of controlling the bitterness of the catechins and thus improving the taste. Regarding instant claim 3, the copending application teaches using the composition in a soft drinks and juice beverages, as recited in copending claims 10-11. Regarding instant claim 5, the copending application in combination with Ohishi et al. teach the use of quinic acid at less than 0.16. Further regarding instant claim 5, the copending application discloses wherein the concentrate comprises from 20 to 90 percent of non-polymer catechins based on a solid content thereof.

This is a provisional obviousness-type double patenting rejection.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Igoe (Dictionary of Food Ingredients) and Food Additives Data Book are cited as further evidence of the ability of disodium phosphate and

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sodium polyphosphate to aid in improving the quality and stability of food products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur  
Examiner  
Art Unit: 1794

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
1794  
10/22/07